

COME NOW the Defendants, by and through their undersigned attorneys, and hereby supplement/update to their *Joint Motion to Compel Production of Brady Materials or, Alternatively, Rule 16, F.R.Cr.P., Discovery Materials Negligently or Intentionally Withheld by the Government* (hereinafter “*Joint Motion*”) [ECF No. 178] with the following information for the Court’s consideration:

Below is a brief timeline of some of the important applicable dates/occurrences:

- On September 26, 2019, the Government received an *Indictment* in this case for conduct it alleged occurred between 2009 and 2016;
- On October 2 and 3, 2019, this Court issued *Discovery and Scheduling Order(s)* as to the Government, Mr. Bennett, Mr. Barrus and Mr. Dutson requiring the Government produce discovery within twenty-one (21) days and that the Government “promptly” produce *Brady* materials;
- On August 13, 2021, Defendants made a formal *Brady* demand on the Government;
- In November of 2021, Defendants caused to be issued various subpoenas *duces tecum* to obtain material they believed existed, but that the Government had provided;
- On January 7, 2022, Defendants received the first set of documents from the Wyoming agencies subpoenaed;
- On January 8, 2022, the Government provided some discovery responsive to the subpoena;
- On January 26, 2022, Defendant’s filed their *Joint Motion* with the Court moving to compel exculpatory and/or discovery materials from the Government;
- On January 28, 2022, Defendants received additional documents that were missing from Wyoming Medicaid in response to the subpoena;
- On January 31, 2022, Defendants received additional documents from Wyoming Medicaid in response to the subpoena¹;

¹ As will be discussed below, there are still additional materials outstanding and the defense continues to work with Wyoming Medicaid in an attempt to obtain these materials.

- On January 31, 2022 and on February 1, 2022, the Government provided additional MFCU case files relating to the 2010 investigation, documents from the qui tam file, and documents the Government received from Wyoming Medicaid as a result of Defendants' subpoenas.

Since filing the *Joint Motion*, Defendants have finally been provided certain exculpatory materials that has been in the Government's possession since at least 2016 and, in many instances, years sooner. For instance, on January 31, 2022 the Government produced a Medicaid Fraud Control Unit (hereinafter "MFCU") document captioned "Memo to File – Case Closure," dated January 28, 2013, some nine years ago, in which the MFCU states that it closed the investigation into Big Horn Mental Health Group (hereinafter "BHMHG") billing for the following reason: "Insufficient evidence to support allegations of fraudulent billing." This document is signed by Sharon Kuster, an Auditor, Greg Smith, an Investigator, and Christine Stickley, the Director of the MFCU at the time. This document was accompanied with documentation underlying the years-long investigation into BHMHG's billing practices, including how the investigation specifically related to Northwest Wyoming Treatment Center (hereinafter "NWTC").

In a January 8, 2022 email from the Government, the Government represented to all defense counsel that it would be "providing you additional discovery as necessary between now and the beginning of trial." Exculpatory and voluminous discovery continues to drip in from the Government, including previously undisclosed client statements from 2015. One example shows a Defendant's efforts to figure out the billing codes by contacting the State after taking over the billing from Dr. Gibson Condie in 2015.

On the day of this filing, the Government has indicated that it "found a hard-drive in the USAO's physical file for the Condie investigation that contains records provided in response to a HIPPA subpoena issued in October 2016." The subpoena, we are told, included obtaining NWTC

records, as well as records from other providers linked to Dr. Condie. According the Government, there are approximately “1,442 pdf files and 8890 native files” that the Government has had—and the case agent reviewed in the 2016-2017 time frame—but which the Government never turned over to Defendants. The Government states that while we may recognize some of the files from other productions, it is not sure if there is anything new contained in these materials. Finally, the Government states that it “thinks” the rest of the files “are unrelated to NWTC and your clients,” but it will let us have them now because “I just found these.” All Defendants have to do to receive these documents is send an external hard drive to the United States Attorney’s Office with the capacity to store “at least 30.6 gigabytes.”

Additionally, on January 31, 2022, the State of Wyoming indicated that it is in the physical possession of around thirteen (13) patient files that NWTC produced to ACS—the State of Wyoming’s contracted third-party vender to conduct audits—in response to the April 17, 2012 records request that have not been provided in response to the subpoenas.² It is estimated that the physical files NWTC provided the State, which have not been produced, are an additional 10,000 pages or more. The Attorney General’s Office is trying to find a digital copy, but is unsure if one exists.

Trial is twenty days from today. The Government has either been dilatory in its Court and Constitutionally-imposed obligations, or this is a deliberate trial tactic. Either way, this is unacceptable conduct by the United States.

² Again, it should not go unnoticed that the Government has free access to Wyoming Medicaid and its documents when it it serves its purposes, but claims it has no obligation to obtain materials from Wyoming Medicaid to provide Defendants because Wyoming Medicaid is not part of the “prosecution team.” This is inconsistent with the Government’s obligation to provide materials within its control. *See United States v. Marshall*, 132 F.3d 63, 69 (D.C. Cir. 1988).

DATED and SIGNED this 1st day of February, 2022.

/s/ Jamie M. Woolsey
Jamie M. Woolsey (WSB # 6-3985)
Ian K. Sandefer (WSB # 6-4334)
Sandefer & Woolsey, Trial Lawyers, LLC
143 N. Park Street
Casper, WY 82601
(307) 232-1977
jamie@swtriallawyers.com

s/Terry J. Harris
Terry J. Harris, WyBar # 5-2068
HARRIS, HARRIS & QUINN, P.C.
P.O. Box 368
2618 Warren Avenue
Cheyenne, Wyoming 82003-0368
Telephone (307) 638-6431
tjharrispc@gmail.com

/s/Edwin S. Wall
Edwin S. Wall # 5-2728
Wall Law Office
43 East 400 South
Salt Lake City, Utah 84111
Telephone (801) 746-0900

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was served this 1st day of February, 2022, as follows:

United States Attorney's Office
Eric Heimann
2120 Capitol Ave, Suite 4000
Cheyenne, WY 82001

☐ U.S. MAIL
☐ HAND DELIVERY
☐ EMAIL
☐ FACSIMILE
☒ CM/ECF

/s/ Jamie M. Woolsey
Jamie M. Woolsey